

Attorney Docket No.: 44352-0009-00-US (227032)

Application No. 10/580,947

Reply to Office Action Dated: December 2, 2008

Response Dated: May 28, 2009

REMARKS

Reconsideration and reexamination of the present application are respectfully requested in light of the following remarks.

1. Status of the Claims

Claims 1-11 stand pending. Claims 1-11 stand rejected.

2. Acknowledgement of Certified Priority Documents

Applicants note with appreciation the indication that the certified priority documents have been received in the above-identified application.

3. Rejection of the Claims Under 35 U.S.C. § 103(a)

Claims 1-11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 2004/096748 A1 in view of U.S. Patent No. 6,184,009 B1 (“Cain”), Kramer *et al.*, *Am. J. Clin. Nutr.* 79(suppl.):1137S-45S (2004) (“Kramer”), and “Fat,” Wikipedia, *at* <http://en.wikipedia.org/wiki/Fat> (last modified Sept. 2, 2008) (“Wikipedia”).

Applicants traverse the rejection. At least the primary reference, WO 2004/096748 A1, and Kramer are unavailable as prior art under 35 U.S.C. § 102. Kramer is available as art under 35 U.S.C. § 102(a) as of its 2004 publication date. WO 2004/096748 A1 is available as art under 35 U.S.C. § 102(a), as of its November 11, 2004 publication date. WO 2004/096748 A1 corresponds to U.S. Published Application No. 2005/214434 A1, which is available as art under 35 U.S.C. § 102(e) as of the international filing date, **March 12, 2004**. U.S. Published Application No. 2005/214434 A1, however, is **unavailable** as art based on the April 25, 2003 filing date of the priority application, KR 10-2003-0026515 (or the March 9, 2004 filing date of KR 10-2004-0015668). *See In re Hilmer*, 359 F.2d 859, 149 U.S.P.Q. 480 (C.C.P.A. 1966); *see also* MPEP § 2136.03 (“Foreign applications’ filing dates that are claimed (via 35 U.S.C. §§ 119(a) - (d), (f) or 365(a)) in applications, which have been published as U.S. or WIPO

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application publications or patented in the U.S., may not be used as 35 U.S.C. § 102(e) dates for prior art purposes.”) (emphasis in original).

The present application, however, is entitled to the benefit of priority under 35 U.S.C. § 119(a) to KR 10-2003-0085422, filed November 28, 2003. *See Hilmer; see also MPEP § 2136.03* (“In contrast, applicant may be able to overcome the 35 U.S.C. § 102(e) rejection by proving he or she is entitled to his or her own 35 U.S.C. § 119 priority date which is earlier than the reference’s U.S. filing date.”). The November 28, 2003 priority date antedates Kramer, WO 2004/096748 A1, and U.S. Published Application No. 2005/214434 A1. Accordingly, none of these references is available as prior art.

To perfect Applicants’ priority claim, Applicants provide herewith a verified translation of KR 10-2003-0085422, accompanied by an executed Statement of the Accuracy of Translation of Priority Document. *See MPEP § 201.15.*

It follows that the present rejection is based on a combination of references that includes references unavailable as prior art. Applicants thus respectfully request withdrawal of the rejection.

Attorney Docket No.: 44352-0009-00-US (227032)

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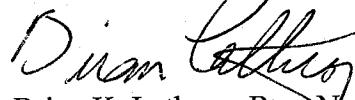
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CONCLUSION

In conclusion, the application is believed to be in condition for allowance. Should any issues remain outstanding or if there are any questions concerning this paper, or the application in general, the Examiner is invited to telephone the undersigned representative at the Examiner's earliest convenience. Should any outstanding fees be owed or overpayments credited, including those for Notice of Appeal, the Commissioner is invited to respectively charge or credit Deposit Account No. 50-0573. If an Appeal Fee is required to maintain pendency of the present application, the Office is authorized to charge the Appeal Fee and use this paper as a Notice of Appeal.

Respectfully submitted,



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